(3)
Supreme Court, U.S.
FILED
99 7 34 OCT 27 1999
OFFICE OF THE CLERK

No.

In the

Supreme Court of the United States

JOSEPH P. GALLUZZI,

Petitioner,

v

UNITED STATES OF AMERICA,

Respondents,

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

APPENDIX VOLUME II (PP. 285-END)

Dennis A. Durkin
Counsel of Record
David D.F. Lawrence
Christopher D. Adams
1120 Bloomfield Avenue
West Caldwell, NJ 07007
(973) 244-9969
Attorneys for Petitioner
Joseph P. Galluzzi

20 pp

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

USA

v.

JOSEPH P. GALLUZZI

CRIMINAL NO. 96-640

NOTICE OF APPEAL

Notice is hereby given that Joseph P. Galluzzi, defendant above named, hereby appeals to the United States Court of Appeals for the Third Circuit from the conviction and sentence entered in this action on September 10, 1998 by the Honorable William H. 'Walls, United States District Court Judge.

Date 9/15/88

US DISTRICT COURT
DISTRICT OF NEW JERSEY

USA

V

JOSEPH P. GALLUZZI

HON WILLIAM H. WALLS

CRIMINAL NO. 96-640

TITLE 18, US CODE SECTIONS 371, 666, 1341, 1343 AND 1952

SUPERCEDING INDICTMENT

The Grand Jury in and for the District of New Jersey, sitting at Newark, charges:

Count 1-11

Scheme and Artifice to Defraud

Defendant and Entities

1. At times relevant to this Indictment:

a. Defendant Jsoeph P. Galluzzi was the fincnacial consultant to the Essex County Board of Chosen Freeholders between about 1982 and 1987. Between about 1987 and about July

1989, defendant was Treasurer of Essex County and Acting Director of Administration and FInance. In about August 1989, defendant became the financial consultant to Essex County at an annual fees of $125,000 and retained that position until about December 1990. As Essex County Treasurer and Director of Administratrion and Financial matters and recommendations for Essex County and (ii) was the chief financial advisor and decision maker on all financial matters for Essex County. His dueties remained the same when he bacame a financial consultant to Essex County in about.

b. Between about 1987 and about June 1992 defendant JOSEPH P. GALLUZZI also was the budget consultant to the Municipal Council of the Township of Irvington and financial consultant for Irvington's fiscal year adjustment financing. Defendant JOSEPH P. GALLUZZI's duties as budget consultant and financial consultant included analyzing, reviewing and performing advisory work with respect to bond issues and acting as the Municipal Council*s representative on bond-related questions.

c. Defendant JOSEPH GALLUZZI also was a certified public accountant and registered municipal accountant and owned and operated an accounting practice, Joseph p. Galluzzi, in Irvington and then South Orange, New Jersey.

d. Essex County is a county in the State of Jersey comprised of 22 municipalities. Essex County*s executive branch 'was headed by a county executive who, among other things, signed contracts, bonds and other instruments requiring the County*s consent. The Essex County legislative branch was the Essex County Board

of Chosen Freeholders which had the power to adopt ordinances and resolutions, including those concerning bond issues. Essex County. was the recipient each year of over $10,000 in federal funds. Essex County issued $23.9 million in general obligation. bonds in 1987; $49 million* in general obliqation* bonds in January 1989; $104 million in general obligation refunding bonds in June 1989, and $62.5 million in fiscal year adjustment bonds in 1991.

e. Irvington was a Township in Essex County governed by a mayor and. Municipal Council. The Municipal Council had the power to adopt ordinances and. resolution including those concerning bond. issues. The Municipal Council also selected underwriters in, connection with such bond issues. Irvington was the recipient each year of over $10,000 in federal.funds. Irvington issued approximately $25 million in fiscal year adjustment bonds in. about February 1992.

f. The-Essex County Improvement Authority ("ECIA") was an independent county agency that periodically issued municipal bonds far the benefit of Essex County or Essex County municipalities. The ECIA issued $65 million in lease revenue bonds for the benefit of Essex County in 1990 and issued. about $49 million in. bonds for the benefit of the Irvington Board of Education* in 1992. .

g First Fidelity Securities Group with offices in Newark, New Jersey, was a department of First Fidelity Bank N A. ("First Fidelity") and was a municipal securities dealer registered with the Securities and Exchange Commission ("SEC"). First Fidelity acted as underwriter. on municipal bond issues for Essex County, the ECIA, and Essex County municipalities. That is, as underwriter, First Fidelity agreed to purchase the bonds issued by the county or other public entity and then. resell the bonds to investors. First Fidelity was a financial institution insured by the Federal Deposit Insurance Corporation.

h. A.G. Edwards & Sons, Inc. ("A.G. Edwards") with offices in Newark, New Jersey, was a broker dealer registered with the SEC. A.G. Edwards acted as underwriter on municipal bond issues for ESsex County, the ECIA, and Essex County muncipalities. Between about January 1991 and December 1993, A G Edwards had. a contractual. relationship with defendant JOSEPH P. GALLUZZI, whereby defendant JOSEPH P. GALLUZZI was paid for purportedly providing* certain consulting and finders fee services to A.G. Edwards.

i Ehrlich Bober & Co., Inc. ("Ehrlich Bober") with offices in New York, New York was a broker dealer registered with the S.E:C. Allegations set forth below relating to A.G. Edwards and an A.G. Edwards vice president include Ehrlich Bober because the A. C. Edwards vice president moved from Ehrlich Bober to A.G. Edwards in about March 1990.

j. Pacific Matrix Financial Group ("Pacific Matrix") with offices in Exton, Pennsylvania and Sherman Oaks, California, was an investment firm engaged in, among other,.things, the reinvestment of municipal bond proceeds. Pacific Matrix often acted as a "GIC" broker by arranging the reinvestment of such bond proceeds, in what was referred to as a, gauranteed investment contract or "gic."

k. AIG Matched Funding ("AIG"), with offices in York, New York, was a subsidiary of AIG Insurance Co. and was a firm in which municipal bond proceeds were reinvested. AIG, in , paid interest on the investment and was commonly referred to as a "provider."

L. The Camden County Municipal utilities Authority ("CCMUA") was an independent public authority engaged in acquiring, constructing, maintaining and operating sewage facilities in Camden County, New Jersey.

m. Ferraioli, Wesdyk and Cuva, ("Ferraioli") a certified public accounting firm with offices in Pompton Lakes, New Jersey, was engaged in, among other things, the highly specialized field of. verification. regarding municipal bond offerings. Verification involved confirming important mathematical computations regarding municipal bond offerings. including the "yield" or interest paid on the bonds.

n. Essex County Attorney No. 1 was an attorney whose identity is known to the grand jury who practices in the County of Essex.

2. From in or about 1989 through in or about 1995, in the District of New Jersey and elsewhere, the defendant JOSEPH P.. GALLUZZI knowingly and willfully devised and intended to devise a scheme and artifice to defraud and for obtaining money and, property by means of false and fraudulent pretenses, representations, and promises, namely a scheme, to defraud Essex Count , the Township of Irvington, and First Fidelity of money and property and to deprive the citizens of Essex County and the Township of Irvington and First Fidelity of the . right of honest services, which scheme and artifice to defraud affected a financial institution and is in substance set forth below.

3. The object of this scheme and artifice to defraud was to obtain money and other things of value for of defendant JOSEPH P. . GALLUZZI and others without the public*s knowledge. .

4. It was part of the scheme and artifice to defraud that from about 1989 and continuing through about 1993, defendant JOSEPH P. GALLUZZI caused a First Fidelity vice president to agree to pay kickbacks to. defendant in connection with and as a reward for defendant*s efforts in his official capacity in directing Essex County and Irvington municipal bond underwriting business to First Fidelity.

5. It was a further part of the scheme and artifice to defraud that defendant JOSEPH P. GALLUZZI and the First Fidelity vice president agreed to. a formula for - the kickback amounts, relating to the value of the bond offerings.

6. It was a further part of the scheme and artifice to defraud that. in about 1989 defendant JOSEPH P. GALLUZZI recommended the Essex County $1.04 million refunding bond issue even though the First Fidelity vice president, advised him it lacked financial merit.

7. It was a further part of the .scheme and artifice to defraud that to disguise the kickbacks, defendant JOSEPH P. GALLUZZI prepared invoices on his firm letterhead falsely representing that he had, performed band-related work for First Fidelity, Pacific Matrix, AIG, the CCMUA, and Ferraioli, when fact he had not.

8. It was a further part of the scheme and artifice to defraud that between about 1989 and about 1993, defendant JOSEPH P. GALLUZZI obtained from the First Fidelity vice president approximately $140,000 in kickbacks through the submission of the above described phony invoices.

9. It was a further part of the scheme and artifice to defraud that in or about June 19891 defendant JOSEPH p. GALLUZZI directed the First Fidelity vice president to make a $25,000 payment to Essex County Attorney No. 1, purportedly for services Essex County Attorney No. 1 performed on a 1989 bond issue despite the fact that this attorney performed no meaningful services on the bond issue.

10. It was a further part of the scheme and artifice to defraud that defendant JOSEPH P. GALLUZZI concealed the scheme by, among other things: .

(a) making false statements to the Essex County Board of Chosen Freeholders about his relationship with First. Fidelity Bank. . ;.

(b) sending securities-related documents to Essex County Attorney No. 1 to make it appear thai said attorney had performed meaningful services on the bond issue for which he was paid, when in fact he had not.

(c)attempting to influence the First Fidelity vice president to give false information to and

withhold true information from law enforcement officers.

11. On or about the dates set forth below in the District of New Jersey and elsewhere, the defendant JOSEPH P. GALLUZZI for the purpose of executing this scheme and artifice to defraud did cause to he sent by U. S. mail or transmitted by means of wire, writings, signals and sounds in interstate commerce as follows:

Count	Approximate Date	Subject Matter
Transmitted -		
1 Mail	1/89	Galluzzi invoice for $5,710 re: Kearny MUA
2 Mail	1/89	Galluzzi invoice . for $6,195 re: Randolph MUA
3 Mail	2/90	Galluzzi letter confirming verification
4 Mail*	2/90	. Galluzzi invoice for $11,000 to Ferraicli
5 Mail	3/90	. Galluzzi invoice for $4,000 re. West New York MUA

6		5/9	Galluzzi invoice for $23,685 re: Camden County MUA	Mail
		8/90	Pacific Matrix check for $8,425.50 to Galluzzi	Mail

	Approximate Date	Subject Matter	Transmitted
8	10/90-	Pacific Matrix check for $11,166.66 to Galluzzi	Mail
9	2/91	Galluzzi invoice for $40,000 to AIG	Wire
10	10/91	Pacific Matrix employee check for $6,000 to Galluzzi	Mail
11	8/92	Pacific Matrix check for $25,000 to Galluzzi	.Mail

In violation of Title is; United States Code, Sections 1341, 1343, 1346 and 2. · .

COUNTS 12-15

Scheme and Artifice to Defraud

1. Paragraph 1 of Count 1 is hereby realleged and incorporated herein.

2. From in or about 1985 through in or about 1987, in the District of New Jersey and elsewhere, the defendant JOSEPH P. GALLUZZI knowingly and willfully devised and intended to devise a scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, namely a scheme to defraud Essex County and First Fidelity of money and property which scheme and artifice to defraud affected a financial institution and is in substance set forth below.

3. The object of this scheme and artifice to defraud was to obtain money and other things of value for the benefit of defendant JOSEPH P GALLUZZI. and others without the public's knowledge. . .

4. It was part of the. scheme and artifice to defraud that in or about 1987 defendant JOSEPH P. GALLUZZI caused a First Fidelity vice president to agree to pay kickbacks to defendant in connection with. and as a reward for defendant's efforts in his official capacity in directing Essex County municipal bond underwriting business to First Fidelity.

It was a further part of the scheme arid artifice to defraud that defendant JOSEPH P. GALLUZZI and the First Fidelity vice president agreed to a formula for the kickback amounts relating to the value of the bond offerings.

6. It was a further part of the scheme and artifice to defraud that to disguise the kickbacks, defendant JOSEPH P. GALLUZZI prepared invoices, on his firm letterhead falsely representing that he had performed bond-related work for First

Fidelity, when in fact he had not

7. It was a.further part of the scheme and artifice to defraud that in about 1987 defendant JOSEPH P. GALLUZZI obtained from the First Fidelity vice president approximately $30,000 in kickbacks through the submission of the above described phony invoices. .

8. On or about the dates sat forth below in the District of New Jersey and elsewhere, the defendant JOSEPH P. GALLUZZI for the purpose of executing this scheme and artifice to defraud did cause to be sent by U.S. mail as follows:

Count	Approximate Date	Subject Matter
12	3/87	Galluzzi invoice for $10,000 re: Atlantic County
13	4/87	Galluzzi invoice, for $8,719

re: Gloucester County

Count	Approximate Date	Subject Matter
14	8/87	

Galluzzi invoice

for $7,500 .

re: Lower Township

Count	Approximate Date	Subject Matter
15	8/87	

Galluzzi invoice

for $5,112.50

re: Wanaque

In violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 16

Scheme and Artifice to Defraud

1. Paragraph 1 of Count 1 is hereby realleged and incorporated herein,

2. Essex County Attorney No. 2 was an attorney whose identity is known to the grand jury who practices in the Countty of Essex.

3. From in or about January 13 90 through in or about 1995, in the District of New Jersey, and elsewhere, the defendant

JOSEPH P. GALLUZZI

knowingly and willfully devised arid intended to devise, a scheme and artifices to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, namely, a scheme to defraud Essex County and A.G. Edwards and to deprive the citizens of Essex County and AG, V Edwards of defendant JOSEPH P. GALLUZZI'S honest services, which scheme and artifice is in substance set forth below.

4. The object of. this scheme arid artifice to defraud was to obtain money and other things of value of or the benefit of defendant JOSEPH P. GALLUZZI and others without the public's knowledge.

5. It was a part of the scheme and artifice to. defraud that beginning in about January 1990 and continuing through about 1993, defendant JOSEPH P. GALLUZZI caused an A. G. Edwards Vice President to agree to pay kickbacks to defendant in connection with and as a reward far defendant's efforts in his official capacity to direct Essex County municipal bond underwriting business to A . G. Edwards.

6. It was a further part of the scheme and artifice to defraud that. in or about January 1991 defendant JOSEPH p. GALLUZZI and the A.G. Edwards Vice President prepared a contract for defendant JOSEPH P. GALLUZZI to become a consultant to A.G. Edwards, purportedly to assist A.G.

Edwards in finding new bond business. The contract provided for payment to defendant JOSEPH P.GALLUZZI of a $2, 000 per month retainer plus 10% of A. G. Edwards's net management fees on bond deals defendant brought to A.G. Edwards.

7. It was a further part of the scheme and artifice to defraud that to disguise the kickbacks, defendant JOSEPH P. GALLUZZI and the AG. Edwards Vice President caused to be prepared phony invoices on JOSEPH P. GALLUZZI letterhead representing that he had performed the. contractual finder services for A.G. Edwards when in-fact he had not.

8. It wasa further part of the scheme and artifice to defraud that between about 1990 and about 1993, defendant JOSEPH GALLUZZI obtained approximately '$67,000 in retainer payments plus approximately $15, 000 in payments through the submission of. the above described phony invoices.

9. It was a further part of the scheme and artifice to. defraud that defendant JOSEPH GAIJLUZZI caused and attempted to cause Essex County, A. G. Edwards, and municipal bond counsel to pay bond issue-related fees to certain attorneys despite the fact that these attorneys performed no meaningful services on the municipal bond issues:

(a) in or about February 1990, defendant JOSEPH P. GALLUZZI without authority or justification caused a $40,000 fee for an unspecified underwriter's counsel to be inserted into an official schedule of bond related fees;

(b) in or about August 1990, defendant JOSEPH p. GALLUZZI attempted to cause bond counsel to make two $5,000 - 10,000 payments to Essex County Attorney No. 2 and an unidentified attorney; and V

(c) in or about November 1990, defendant JOSEPH P. GALLUZZI caused A.G Edwards to make a $20,000 payment to Essex County Attorney No. 2.

10. In or about June 1992, in the District of New Jersey, and elsewhere, the defendant

JOSEPH P. GALLUZZI

for the purpose of executing this scheme and artifice to defraud did cause to be transmitted by means of wire, wrltings, signals arid sounds in interstate commerce, a consulting contract and invoices.

In violation. of Title 18, United States Code, Section 1343, 1346 and 2.

COUNTS 17-21

1. Paragraphs 1 and 4 through 10 of Count 1 and paragraphs 2 and 5 through 9 of Count 16 are hereby realleged and incorporated herein.

2. From in or about 1985 through in or about
3, in Essex county, in the District of New Jersey, and elsewhere,
endant JOSEPH P. GALLUZZI did knowingly and willfully and
ruptly solicit and demand for his own benefit, and accept and agree to
ept money intending to be influenced and rewarded in connection with a

business, transaction and series of transactions of a local governrae.nt and a local government agency involving anything of value of. $5,000 or more.

Count	Approximate Date	Approximate Amount of Kickback	Matter Government Entity
17	10/21/91	V '$6,000.00	1989 Essex County Irvington Bond Deals
18	1/30/92	$4,737.25	1990 Essex County Bond Deal
19	4/15/92	$ 945.82	1990 Essex County Bond Deal
20	7/30/92	V $3,067.75	1990 Essex County Bond Deal
21	8/4/92	$25,000.00	1992 Ixvington Bond Deal

In violation, of Title 18, United States Code, Section 666 and 2.

COUNTS 22-26 V

Use of Facility in Interstate
Commerce - Illegal Benefit to a Public Servant

1. Paragraphs 1 and 4 through 10 of Count 1 and paragraphs 2 and S through 9 of Count 16 are realleged and incorporated herein.

2. From in or about 1985 until at least 1993, in the District of New Jersey, and elsewhere, the defendant JOSEPH P. GALLUZZI knowingly and willfully did. use and cause to be used the U.S. Mail and facilities in interstate commerce with the intent, to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on. of an. unlawful activity - namely soliciting, accepting and. agreeing to accept benefits as compensation for having, as a public servant given a decision, opinion and recommendation favorable to another and for having otherwise exercised a discretion in favor of another contrary. to N.J. Stat. Ann. S 2C: 27-4. -- and thereafter performed and attempted to perform an act to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of the unlawful activity, as

Count 22 - Interstate Facility- Use of the U.S. Mails and facilities in interstate commerce to send a Joseph P. Galluzzi invoice to Pacific matrix on about September 19, 1991 and to send a check from Pacific Matrix to defendant Jnoseph P. Galluzzi on or about October 21, 1991

Subsequent Acts-(a) defendant Joseph P. Galluzzi accepting a check for $6,000 about 10/23/91 (b) defendant Joseph P.

Galluzzi depositing that check into his bank account on or about October 23, 1991

Count 23 - Use of facilities in interstate commerce to send a defendant Joseph P. Galluzzi invoice to A.G> Edwards on or about January 30, 1992 and to send a check from A.G. Edwards to defendant Joseph P. Galluzzi on or about 1/30/92

Subsequent Acts (a) defendant Joseph P. Galluzzi accepting a check for $4,737.25 on or about January 30, 1992 (b) defendant Joseph P. Galluzzi depositing that check into his business account on or about 1/30/92 (b) defendant Joseph P. Galluzzi faxaing to A.G> Edwards , on or about 2/24/92, a balance sheet showing the remaining balance on the $60,000 kickback he was owed.

Count 24 - Use of facilities in interstate commerce to send a defendant Joseph P. Galluzzi invoice to A.G. Edwards on or about April 15, 1992 and to send a check from A.G. Edwards to defendant Joseph P. Galluzzio on or about 4/15/92

Subsequent Acts (a) defendant Joseph P. Galluzzi accepting a check for $945.82 on or about 4/15/92 (b) defendant Joseph P. Galluzzi depositing a check for $945.82 into his business account on or about 4/15/92.

Count 25 Use of facilities in interstate commerce to transmit a contract and invocies to A.G. Edwards in or about June 1992.

Subsequent Acts (a) defendant Joseph P. Galluzzi accepting a check for $3067.75 on or about 7/30/92 (b) defendant Joseph P. Galluzzi depositing a check for $3067.75 on or about 7/30/92

Count 26 Use of the U.S. Mails amd facilities in interstae commerce to send a Joseph P. Galluzzi invoice to Pacific Matrix on or about August 4, 1992 and to send a check from Pacific Matrix to Joseph P. Galluzi on or about August 18, 1992

Subsequent Acts (a) defendant Joseph P. Galluzzi accepting a check for $25,000 on or about 8/92 (b) defendant Joseph P. Galluzzi depositing a check for $25,000 on or about 8/92

In violation of Title 18, US Code, Sections 1952 and 2.